IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17942 of 2003

with

SPECIAL CIVIL APPLICATION No 17943 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

YOGESH JAGMOHANDAS LOTIYA

Versus

COMMISSIONER OF CUSTOMS AND CENTRAL EXCISE

Appearance:

1. Special Civil Application No. 17942 of 2003

MR MRUGEN K PUROHIT for Petitioner No. 1

..... for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE A.R.DAVE
and
HON'BLE MR.JUSTICE K.A.PUJ

Date of decision: 22/12/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE A.R.DAVE)

Rule. Service of rule is waived by Sr. Central Government Standing Counsel Shri D.N. Patel for the respondent. At the request of the learned advocates, both the petitions are finally heard today and are decided by this common judgment.

2. The grievance, which the petitioner, who is common in both the petitions, has ventilated in these petitions, is with regard to dismissal of appeals by the CEGAT by orders dated 30.1.2003.

3. The circumstances in which the appeals had been dismissed are as under :

3.1 By an order dated 24.9.2002, the petitioner was directed to deposit in all a sum of Rs. 20,000/- in two appeals within a period of 8 weeks from the date of the order and report compliance thereof on or before 30.12.2002.

3.2 It is the case of the petitioner that the sum of Rs. 10,000/- in both the appeals had been paid by the petitioner on 21.11.2002. The said fact can be clearly revealed from Exh. 2, which shows that on 21.11.2002, the amount had been paid by the petitioner. Intimation of the said fact had also been forwarded by the petitioner to the Assistant Registrar/Technical Officer of CEGAT on 24.12.2002. Upon perusal of the postal stamp affixed on the acknowledgment, it is clear that the said letter had been received by the registry of CEGAT on 26.12.2002. The aforestated facts could not be disputed by Shri D.N. Patel, Sr. Central Government Standing Counsel, appearing for the respondent.

3.3 Unfortunately, at the time when the appeal was notified for hearing before the CEGAT on 30.1.2003, nobody had appeared for the petitioner and somehow the intimation with regard to compliance of the order dated 24.9.2002 was not given to the CEGAT. In the circumstances, the impugned order dated 30.1.2003 was passed by the CEGAT, whereby the appeals filed by the petitioners have been dismissed.

4. Looking to the aforestated facts, in our opinion, the Tribunal was in error when it dismissed the appeals, though the amount had been deposited within the time

prescribed and intimation of the said fact had been given to the Registry of the CEGAT, and the said communication had also been received on 26.12.2002.

5. In view of the fact that the aforestated facts could not be disputed by Shri D.N. Patel, Sr. Central Government Standing Counsel, we quash and set aside the impugned orders dated 30.1.2003 passed by the CEGAT. The CEGAT shal now hear the appeals on merits in due course.

The petitions thus stand disposed of as allowed. Rule is made absolute in both the petitions with no order as to costs.

(A.R. Dave, J.)

(K.A. Puj, J.)

(hn)